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No. 262

In the Supreme Court of the United States

OCTOBER TERM, 1952

CALMAR STEAMSHIP CORPORATION, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the granting of a writ of certiorari in this case limited to the question of jurisdiction decided by the court below. Petitioner's reserved questions (Pet. 7), not having been considered because of the holding of the absence of jurisdiction, are not appropriate issues for this Court.

Section 1 of the Suits in Admiralty Act (46 U. S. C. 741) provides that no vessel owned by the United States, or operated by or for the United States, shall be proceeded against by arrest or seizure. Section 2 of the Act (46 U. S. C. 742) vests jurisdiction in the district courts over suits against the United States involving such vessels, if suits could have been maintained against private owners, but only if the vessel "is employed as a merchant vessel." The important issue raised by the petition is whether a freighter admittedly operated for the United States by its private owner, and carrying military supplies of the United States for hire, should be considered as not "employed as a merchant vessel."

The Government urged in the district court and again in the court below that, since the goods carried were government munitions, the vessel, although privately owned and operated, was not employed as a merchant vessel. The district court refused to accept this argument and specifically held that the vessel was employed as a merchant vessel (R. 743), but it decided for the United States on another ground. The court below reversed the jurisdictional finding, holding that the nature of the cargo resulted in the vessel's being engaged in public service and thus took it out of the category of vessels employed as merchant vessels.

This is an important question because it involves the fundamental jurisdiction of the district courts over a considerable volume of litigation which, if the opinion below stands, will have to be brought in the Court of Claims or the district courts under the Tucker Act (28 U. S. C. 1346(a); 1491) or the Tort Claims Act (28 U. S. C. 1346(b)). It is clear that jurisdiction would not lie in the district court under the Public Vessels Act (46 U. S. C. 781), since, regardless of whether the vessel was employed as a merchant vessel, it is not disputed that it was being privately operated *for* the United States rather than *by* the United States.

The court below relied upon a line of cases starting with *The Western Maid*, 257 U. S. 419. It is believed that these cases are not controlling on the present issue, since they all involve situations where the vessels were being operated by the United States, rather than for it. In those cases, therefore, the fundamental issue was really whether or not the vessel was actually a public vessel, which, as pointed out above, is not involved in the present case.

The petitioner argues that a result of the present decision is to subject to seizure vessels engaged in carrying government cargoes in circumstances similar to those in the present case (Pet. 11). This argument is based on the assumption that Congress intended to exempt from seizure, by Section 1 of

the Suits in Admiralty Act, all publicly operated vessels, but only those privately owned and operated vessels which were covered by Section 2, which vested jurisdiction in the district courts to hear suits *in personam* against the Government. Although the result suggested by the petitioner may not be required by the language of the statute, since the specific language "employed as a merchant vessel" appears in Section 2 only, and does not constitute a condition to the prohibition of suits in Section 1, the petitioner argues that this was the intent of Congress, and cites some congressional history to support its view. Needless to say, the question of whether or not such vessels are subject to attachment is a question of tremendous importance from the point of view of the Government.

For the foregoing reasons, the United States does not oppose the granting of the petition for a writ of certiorari.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

SEPTEMBER 1952.

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